

WWR# 30534510

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS – EASTERN DIVISION**

IN RE:

Gregory S. Bussell and Jennifer K. Bussell

Debtor.

Bankruptcy No. 15-13628
Judge A. Benjamin Goldgar

Chapter 7

Discover Bank,

Plaintiff,

v.

Gregory S. Bussell,

Defendant.

Adversary No. 15-

COMPLAINT TO DETERMINE DISCHARGEABILITY OF A DEBT

NOW COMES Discover Bank, by and through its attorney, Casey B. Hicks, of Weltman, Weinberg & Reis Co., L.P.A. and states as follows:

Jurisdiction and Venue

1. The Defendant Gregory S. Bussell is a debtor in the voluntary Chapter 7 bankruptcy petition filed in this Court on May 27, 2015.
2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 151, 157, and by general order of reference from the United State District Court for the Northern District of Illinois.
3. Venue in this Court is proper pursuant to 28 U.S.C. § 1408.
4. This matter is a Core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

Facts Common to all Counts

5. The Plaintiff is an issuer of credit cards and offers revolving credit card accounts to individuals.

6. The Defendant is an individual consumer and the holder of a credit card account with Plaintiff, account number ending in 9336 (“Account”).
7. Consumer customers agree to make monthly installment payments for purchases and cash advances plus pay applicable interest and fees under the credit card accounts.
8. The balance owed to Plaintiff on the Account as of the date of filing the bankruptcy petition was \$16,466.62.
9. As of December 10, 2015 the balance owed to Plaintiff on the Account was \$376.78.
10. More specifically, from March 7, 2015 to May 9, 2015, immediately prior to the filing of the bankruptcy petition, Defendant made purchases and Plaintiff financed said purchases in the amount of \$4,259.20.
11. The Defendant made the following purchases and Plaintiff financed said purchases through the Account within 90 days before filing the bankruptcy petition:

3/7/2015	SP * HURRY UP AND LIVE 6158384788 FL	125.5
3/7/2015	NIKE PLEASANT PRAIRIE FS PLEASANT PR WI	1061.4
3/7/2015	GREEN BASIL THAI RESTAUR VERNON HILLS IL	40
3/7/2015	GAP OUTLET #7763 KENOSHA WI	95.89
3/7/2015	COLUMBIA SPORTSWEAR 490 PLEASANT PRAIWI	71.06
3/7/2015	A EAGLE OUT00022889041 PLEASANT PRAIWI	268.81
3/8/2015	PARKINGMETER4 8772427901 CHICAGO IL	8
3/8/2015	17 E ADAMS CHICAGO IL	26
3/10/2015	PGA OF AMERICA IL SECT 847-729-5700 IL	208
3/11/2015	MARSHALL BEAUTY SALON RIVERWOODS IL	35
3/14/2015	MALNATIS 7 BUFFALO GROVE IL	61.18
4/9/2015	POTBELLY 081 VERNON HILLS IL	31.37
4/9/2015	DD/BR #306437 Q35 VERNON HILLS IL	52.83

4/10/2015	MARSHALL BEAUTY SALON RIVERWOODS IL	35
4/10/2015	HOMER S ICE CREAM WILMETTE IL	6.81
4/11/2015	WARREN GOLF COURSE NOTRE DAME IN	26.4
4/11/2015	SUSHI KUSHI TOYO LAKE FOREST IL	85
4/11/2015	O'ROURKE'S PUBLIC SOUTH BEND IN	38
4/11/2015	CORNDANCE TAVERN MISHAWAKA IN	85.24
4/12/2015	WENDY'S #0561 SOUTH BEND IN	13.95
4/12/2015	RESIDENCE INNS SOUHBE215 SOUTH BEND IN	135.55
4/12/2015	GOLF GALAXY # 19 VERNON HILLS IL	130.47
4/13/2015	WALGREENS #5256 LINCOLNSHIRE IL	48.26
4/13/2015	RAINBOW DRY CLEANERS BUFFALO GROVE IL	218.95
4/13/2015	LOWE'S OF VERNON HILLS, VERNON HILLS IL	56.37
4/13/2015	HOTELS.COM121915786189 BELLEVUE WA	168
4/13/2015	GOLF GALAXY # 19 VERNON HILLS IL	46.08
4/13/2015	DICK'S CLOTHING&SPORTING VERNON HILLS IL	167.29
4/15/2015	UNIV OF NOTRE DAME CONC NOTRE DAME IN	8
4/15/2015	CORNER BAKERY SKOKIE IL	18.44
4/15/2015	BARNES & NOBLE #2622 SKOKIE IL	6.45
4/15/2015	001 DEBTORCC INC JERSEY CITY NJ	<u>9.95</u>
TOTAL:		\$3,889.25

12. According to the petition, Debtors' unsecured debt totals over \$1,262,452.00.
13. According to the Debtors' Schedules, Debtors' expenses exceed income by \$2,033.00

Count I, Fraud; 11 U.S.C. § 523(a)(2)(A)

14. Plaintiff adopts and incorporates by reference all the allegations contained in paragraphs 1-14.
15. Pursuant to 11 U.S.C. § 523(a)(2)(A), money, property, services, or an extension, renewal, or refinancing of credit are nondischargeable to the extent that they are obtained by false pretenses, a false representation, or actual fraud.
16. Defendant obtained money, property, and/or services through an extension of credit advanced by the Plaintiff on the Account.
17. The Defendant knowingly sought and obtained financing from Plaintiff with no intention to pay off the full balance of charges incurred.
18. The Defendant was insolvent at the time of the transactions.
19. Defendant knew, or should have known, at the time of the transactions that he could not afford to repay Plaintiff, and in fact could not afford to repay Plaintiff.
20. Defendant made the purchases in anticipation of filing this bankruptcy.
21. The Defendant, as such, falsely represented an ability and intent to repay Plaintiff, and Plaintiff reasonably relied upon such representations to its detriment.
22. The money, property, and/or services obtained by the Defendant through the Account and the credit advanced by the Plaintiff on the Account was obtained by Defendant's false representations, false pretenses, or actual fraud.
23. Plaintiff has been damaged by the Defendant's fraudulent conduct in the form of an unpaid balance on a secured loan with no recovery of its collateral.
24. As such, Defendant's debt to Plaintiff is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A).

Count II, Presumption of Nondischargeability; 11 U.S.C. § 523(a)(2)(C)

25. Plaintiff adopts and incorporates by reference all the allegations contained in paragraphs 1-24.
26. Pursuant to 11 U.S.C. § 523 (a)(2)(C)(i)(I), consumer debts owed to a single creditor and aggregating more than \$600 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable.
27. The above-mentioned purchases made by the Defendant and financed by the Plaintiff through the Account were purchases made by the Defendant within 90 days prior to the filing of the Defendant's bankruptcy petition or close enough to 90 days to fall under the 90 day umbrella of time by the proximity between the time of the purchases.
28. Defendant's purchases were for luxury goods or services and is not necessary for the support or maintenance of the Defendant or a dependent of the Defendant.
29. The purchases made within 90 days prior to the filing of this case creates a presumption that such debt was incurred fraudulently and is nondischargeable.
30. Accordingly, the debt is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(C)(I).

Count III, Money Judgment

31. Plaintiff adopts and incorporates by reference all the allegations contained in paragraphs 1-30.
32. The total of the charges and cash advances presumed to be nondischargeable is \$3,889.25.
33. Upon a finding that the debt is nondischargeable, Plaintiff is entitled to a money judgment.

WHEREFORE, Discover Bank prays for the entry of an order as follows:

A. For an order declaring that the debt owed to Plaintiff by Defendant as set forth in the Complaint is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A); and

B. For an order declaring that the debt owed to Plaintiff as a result of the purchases by Defendant as set forth in the Complaint is non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(C)(I); and

C. For a judgment in favor of Plaintiff and against Defendant in the principal amount of \$3,889.25; and

D. For such other and further relief as this Court deems just.

Respectfully Submitted:

By: /s/ Casey B. Hicks

Casey B. Hicks

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